random samples into conclusions about consumer behavior statewide.[24]

It is perhaps understandable that M/A/R/C had to work with the number of respondents who answered the ad and were not able to increase the sample size once the methodology was set. Clearly, M/A/R/C did the best with the data they had. And our critique does not mean that the evidence gathered by M/A/R/C is necessarily wrong: it may be right, it may be wrong. There is simply no reliable way to judge the validity of the evidence since the sampling methodology does not comport with necessary rules of statistics.

Even if we ignore the fatal errors committed in extrapolating the data as BellSouth has done, it is worth examining the implications of the study, assuming, contrary to fact, that the predictions made with the data are reliable. What are the implications, for example, of the study's finding that 6% of PCS subscribers subscribe to PCS instead of wireline service when initiating service?[25] Since there are approximately 35,000 PCS subscribers in Louisiana, this would imply that statewide, about 2100 customers (1454 business, 646 personal) have subscribed to PCS instead of wireline service when initiating service. At first blush, this might

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[24] M/A/R/C pushed these small samples even further in its "Phase 2" conversational interviews. A few selected interviewees were asked to describe their personal habits, reasons for selecting PCS service, etc. Portions of transcripts of these interviews were included in the study. M/A/R/C then drew conclusions (on page 6 of the study) that purport to identify "motivators" of the substitution of PCS service for wireline service. As above, due to the tiny sample size, the conclusions of such "in-depth" interviews are especially suspect.

[25] Id., p. 6.

seem to be an significant finding. However, as a percentage of business and residential lines in the state, these numbers are near infinitesimal: they account for *two-tenths of one percent* of BellSouth's business lines and *four hundredths of one percent* of BellSouth's residential access lines in the state.

In conclusion, the BellSouth PCS survey presents some interesting anecdotal information about 202 customers who answered a newspaper ad. The information elicited in the interview may well help BellSouth shape future marketing programs and provide direction for future, more rigorous, research. However, the study does not provide solid information on which the Commission should establish telecommunications policy. In short, the Commission should not rely on the Louisiana PCS Study for its major conclusion or the implication that BellSouth attempts to draw from the study.

We turn now to BellSouth's additional arguments to explain why its application should be found to meet the public interest test despite the conclusion that consumers in Louisiana do not have a realistic choice.

III. BELLSOUTH'S OTHER PUBLIC INTEREST ARGUMENTS ARE NOT SUFFICIENT TO OVERCOME THE PRESUMPTION AGAINST THE APPLICATION.

BellSouth's public interest discussion contains a list of potential consumer benefits if its application is granted. Some of the benefits might, indeed, materialize. Individually and collectively, however, these benefits pale in comparison to the benefits consumers will attain once they have a realistic choice of an alternative local telephone company. In short, the putative benefits of BellSouth's long distance entry do not outweigh the presumption against the application that arises from the lack of a realistic choice.

A. The statute does not require the FCC to defer to the views of state regulatory commissions concerning the public interest standard.

BellSouth makes several references to the conclusion of the Louisiana Public Service Commission that "consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market."(Brief, pp. 71, 72, 105). While the recommendations of state commissions should be taken seriously, the statutory language does not require the FCC to show special deference to the views of state commissions when making their decisions under the public interest test.

Further, if the public interest test in section 271 is to have any meaning, it must be possible to deny the application on public interest grounds alone. BellSouth has not demonstrated that the Louisiana Commission considered grounds under which BellSouth could have failed to pass the public interest test. For this reason, the conclusory statement of the Louisiana PSC is an insufficient grounds for overcoming the presumption against the application that arises due to the lack of realistic choice.

B. While the costs of delaying BOC entry into long distance may be high, the costs of approving BOC entry into the long distance market before consumers have a realistic choice are even higher.

Using the estimates of Professor Jerry Hausman of MIT, BellSouth argues that delaying Bell company interLATA entry has cost U.S. residential consumers $7 billion per year, effectively imposing an annual tax of over $100 on each long distance customer. (Brief, p. 72) CPI does not dispute that keeping the Bell Companies out of the long distance market is costly (although it is extremely difficult to measure these costs with any degree of certainty). Even assuming that Professor Hausman is correct, however, the fact that there are costs involved in not allowing the Bell Companies into the interLATA market does not complete the public interest inquiry. It is necessary to compare the costs of keeping the Bell Companies out of the interLATA market versus the costs of letting them into the interLATA market prematurely, that is, before consumers have a realistic choice for local service. And it is also necessary to ask whether the lack of competitive alternatives could jeopardize the benefits of that entry.

First, the cost of granting a Bell company application prematurely, that is, before consumers have a realistic choice, is likely to be even more costly than the costs of withholding interLATA authority. For instance, some parties estimate that the local telephone companies are overcharging long distance companies for interstate access to the local telephone network by $10 billion each year.[26] These excessive charges for *interstate* access do not include excessive charges for *intrastate* access and *local* service. If the Bell Companies are granted interLATA relief before actual competitors enter the market providing service, the risk exists that competition for local telephone service will never develop, and consumers will never achieve the benefits of the rate reductions for interstate access, intrastate access, and local service that they deserve.

BellSouth counters that allowing the Bell Companies into the interLATA market will increase, not decrease, local competition. BellSouth maintains that "[a]llowing BellSouth's entry would end the incentives of potential competitors to go slow in Louisiana, or to limit their local offerings, in an effort to delay BellSouth's entry while pursuing more profitable markets elsewhere." (Brief, pp. 72-73) We are not aware of any evidence that competitors are "go[ing] slow", or delaying their efforts to compete solely to keep BellSouth out of long distance. In fact, BellSouth's argument is counterintuitive: if the market is as competitive as BellSouth alleges, there is no reason a competitor would hold back on its efforts to sign up customers to bar BellSouth's long distance entry because it would be losing customers to other competitors. BellSouth's argument is essentially that CLECs would prefer to "cut off their nose to spite their face."

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[26] Ex Parte Letter from Mary L. Brown, Senior Policy Counsel of MCI, to Mr. Richard Metzger, Chief, Common Carrier Bureau, May 7, 1998, RM 9210.

Granting BellSouth's application is more likely to harm than help the growth of local competition. BellSouth maintains that CLECs will have greater *incentives* to enter the Louisiana market once BellSouth is allowed to provide long distance service. But competitors are likely to have less *opportunity* to enter the local market once BellSouth's application is granted because BellSouth will no longer have the incentive to cooperate with competitors in granting access to the BellSouth network. Once BellSouth's entry into the interLATA market is granted, CLECs may well reduce their efforts to compete in that local market because they know that their efforts to obtain BellSouth's assistance will be met with new, additional resistance.

If on the other hand, consumers have a realistic choice, competitors will have established a toehold in the market, and they will have generated a history of compliance by BellSouth with the requirements to open its network to competitors. Thus, competitors will be less likely to pull out of the local market, and it will be easier for regulators to detect any attempt by BellSouth to reduce its cooperation with competitors. Thus, waiting until consumers have a realistic choice is more likely to lead to the long-lasting (perhaps even "irreversible") competition that policy-makers are seeking.

Second, even if Professor Hausman is correct that entry of the Bell Companies could generate $7 billion per year in consumer benefits, there is little likelihood that those benefits will be passed on to consumers unless the Bell Companies face some competitive pressures to do so. In other words, even if the Bell Companies could achieve certain efficiencies from the joint provision of local and long distance service, these efficiencies may well be retained by the shareholders instead of being flowed through to consumers. If, on the other hand, consumers have the opportunity to choose to subscribe to alternative carriers who are also participating jointly in local and long distance markets, the Bell Companies are likely to have a greater incentives to reduce their prices, improve their service quality, and otherwise seek to retain the loyalty of their customers.

C. BellSouth's entry into the long distance market is not likely to generate significant consumer gains in that market.

Whether or not the long distance market is oligopolistic, BellSouth's entry into that market is unlikely to make it more competitive. If BellSouth enters the long distance market it will do so through a separate affiliate that will operate just as any other long distance carrier. BellSouth's long distance affiliate will pay the same access charges and seek to win customers as does any other new long distance entrant. In short, BellSouth will be one of several hundred long distance carriers that already offer service in that market.

BellSouth has committed to setting its initial basic rates at least 5 percent lower than the corresponding rates of AT&T. The value of this potential benefit is slight, as almost every carrier in the long distance market routinely sets its rates lower than AT&T's basic rates in order to win customers. The significance of this commitment is particularly suspect when compared to the 17% discount that BellSouth claims is offered by Southern New England Telephone (SNET).

D. The other purported benefits of BellSouth's long distance entry are not persuasive.

BellSouth concludes by reciting a litany of potential benefits of its entry into the long distance market. For the most part, these potential benefits are either exaggerated or nonexistent.

Marketing Skills: BellSouth argues that its marketing skills will allow it to provide better interexchange services to Louisiana and to sell them effectively. (Brief, p. 86) BellSouth's marketing experience in other industry sectors (wireless, Centrex, customer premises equipment and directories) may indeed help *BellSouth* market its long distance service, but it is unclear that this experience will benefit *consumers*. If BellSouth is able to reduce its costs of marketing by using existing sales and customer support systems, these benefits will only accrue to consumers if BellSouth has an incentive to pass them through to consumers. As noted earlier, consumers are unlikely to see these benefits unless they have competitive alternatives.

Brand Name Recognition: BellSouth believes its brand name will make it a strong competitor to the three major incumbents. (Brief, p. 86) Again, BellSouth's brand name may help BellSouth, but it is unclear how BellSouth's brand name alone will benefit consumers.

One-stop shopping: BellSouth maintains that it will be able to offer bundled service offerings and one stop shopping, providing consumers with greater convenience and the ability to "secure volume discounts". The availability of one stop shopping will certainly benefit consumers, as long as consumers can obtain this same convenience from several service providers. It would distort the market, however, if only one carrier was able to provide one stop shopping. Consumers could then be persuaded to subscribe to one carrier based upon its ability to engage in joint marketing, regardless of the quality of the service being provided. This result would not ensure that consumers enjoy the long run benefits of competition. For consumers to benefit from a competitive market, they must be able to choose from among several providers who can each provide a package of services. To attain this end, consumers should have a realistic choice of competitive local carriers before the Bell Company is allowed to enter the long distance market.

IntraLATA toll competition: BellSouith argues that "approval of this application will trigger "1+" *intra*LATA competition in Louisiana". (Brief, p. 89) Under section 271(e)(1), states may order intraLATA toll dialing parity after February 8, 1999, whether or not the Bell Company has been approved to provide interLATA service. Thus, consumers could (if ordered by the Louisiana PSC) obtain the benefits of enhanced intraLATA toll competition regardless of the outcome of this application.

IV. CONCLUSION

Finally, BellSouth maintains that "it is simply wrong to suggest that there would be consumer benefits from further delaying long distance competition in the name of possible local competition." (Brief, p. 106) BellSouth maintains that the local market is already open and that competition will develop as quickly as competitors choose to enter the market.

In essence, BellSouth asks the FCC naively to put its faith in BellSouth's willingness to open its market. It is significant that, in the almost two and one-half years that have elapsed since the passage of the 1996 Act, not one local exchange carrier has been found to have complied with the requirements of that Act. At one point, the FCC imposed a deadline for the LECs to implement nondiscriminatory operational support systems; not one LEC has complied with that deadline. In short, there is little reason to accept on faith BellSouth's argument that it will open its markets to competition. Unless regulators continue to insist that BellSouth demonstrate that its markets are open and competitors are, in fact, offering service, and until BellSouth can demonstrate that consumers in the local market have a realistic choice of competing local carriers, it would be premature to grant BellSouth's application to enter the interLATA market.

BellSouth has not demonstrated that consumers in Louisiana have a realistic choice of alternative local carriers. BellSouth's arguments that it should be allowed into the long distance market are unconvincing and are insufficient to overcome the presumption against its application. For all these reasons, BellSouth's application should be denied.

Respectfully Submitted,

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Certificate of Service

I, Bridget J. Szymanski, hereby certify that on this fifth day of August, 1998, copies of a corrected version of the foregoing Comments of the Competition Policy Institute were served by hand or by first-class, United States mail, postage prepaid, upon each of the following:

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